



OFFICE OF PUBLIC INSTRUCTION

PO BOX 202501
HELENA MT 59620-2501
www.opi.state.mt.us
(406) 444-3095
(888) 231-9393
(406) 444-0169 (TTY)

Linda McCulloch
Superintendent

May 18, 2005

To: Authorized Representatives
IDEA Part B/Preschool Projects

From: Marilyn Pearson
Assistant Director of Special Education

Re: Application Packet for Part B and Preschool (Section 619) Allocations Under The
Individuals With Disabilities Education Act (IDEA)

MOE: The Final Maintenance of Effort (MOE) report for state fiscal years 2003 and 2004 include any amendments that were submitted to the Office of Public Instruction (OPI) for the FY 2003 Trustees' Financial Summary and all approved allowable exceptions. The MOE reports are available at the following Web site: www.opi.mt.gov/speced/finalmoe.html.

ALLOCATIONS: Estimated preliminary IDEA Part B and Preschool allocations are available on the OPI Web site at: www.opi.state.mt.us/PDF/SpecED/fis/FedAI/.

IDEA 2004: Reauthorization of IDEA has resulted in a number of changes in how IDEA Part B funds can be used. These changes are described in this memo.

Application Due to the OPI: June 25, 2005

Enclosed is your application for IDEA Part B and Preschool funds for the FY '06 project year. Your application must be received at the Office of Public Instruction on or before June 25, 2005, to ensure there is no lapse in funding. When completing your application, it will be necessary for you to refer to the final maintenance of effort report and the allocations which are available on the OPI Web site addresses indicated above (in the text box). This packet includes the following:

- Consolidated Application for Part B and Preschool Funds
- IDEA Part B and Preschool Proportionate Share Calculation Forms

"It is the mission of the Office of Public Instruction to improve teaching and learning through communication, collaboration, advocacy, and accountability to those we serve."

I. REQUIREMENTS FOR ANNUAL APPLICATION APPROVAL

In order for an applicant to receive approval for their annual application, the applicant must:

- Submit a completed IDEA Part B/Preschool application;
- Have an OPI-approved Program Narrative on file with the Division of Special Education; and
- If monitored for compliance by the Office of Public Instruction, Division of Special Education, have completed required actions identified in confidential memos or corrective actions in accord with their due dates as stated in the monitoring reports sent to the applicant (in the case of a cooperative, this is applicable to the cooperative and its participating districts).

II. ALLOCATIONS FOR FY '06 PROJECTS

IDEA PART B

The IDEA Part B allocations are based on preliminary information from the U.S. Department of Education and distributed to applicants in accord with the provisions of the Individuals with Disabilities Education Improvement Act (IDEA) of 2004. **Final allocations will be adjusted to accommodate changes in the grant award, as well as for other changes that may have occurred (e.g., change in participating districts, non-operating districts, etc.).** It is not uncommon for these changes to occur. Allocations to applicants are based on the statutory provisions of Section 611(f)(2) of IDEA, as amended in 2004. In addition to the required allocations, the OPI also distributes supplemental flow-through funds. Supplemental flow-through funds are a portion of the state's discretionary funds (part of the maximum state set-aside allowed). They are distributed to applicants as supplemental flow-through and have been calculated for distribution based on the public and private school enrollment and poverty data.

PRESCHOOL FUNDS

Preschool allocations are distributed in accord with Section 619 (Preschool Grants) requirements. Allocations also include supplemental flow-through funds. These funds are a portion of the state's discretionary funds (part of the maximum state set-aside allowed). The funds are distributed as supplemental flow-through and calculated based on enrollment in public and private schools and poverty data. Effective in FY '06, the OPI distributes 100 percent of its Preschool Grant award in the form of allocations.

III. PROPORTIONATE SHARE CALCULATION FOR PARENTALLY PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES

Consistent with the requirements under IDEA 2004, each school district, including each district that participates in a special education cooperative or consortium, must calculate a proportionate share of their current-year IDEA Part B and Preschool allocation of funds for special education and related services for parentally placed IDEA-eligible private school children with disabilities.

In Montana, for purposes of calculating the proportionate share, private school children includes IDEA-eligible children in home schools that were registered with the county superintendent at the time of the December child count. Forms for determining the proportionate share for both Preschool and Part B funds have been enclosed with this memo.

The proportionate share is based on the total number of IDEA-eligible private school children with disabilities who were enrolled in a private school within the district's boundaries at the time of the December 1, 2004, child count. When calculating the proportionate share, IDEA-eligible private school students are defined as those students who, at the time of the December 1, 2004, child count, were between the ages of 5 and 19 (5 through 18, inclusive).

In Montana, regular public education is not provided for children ages 3 and 4 or for children who do not turn 5 on or before September 10 of the school year. The district is obligated to make free appropriate public education (FAPE) available for all eligible preschool children with disabilities residing within its district boundaries beginning on the child's third birthday and through age 5. The district meets its full obligation to this age group through the IEP.

Because public education is not provided for students ages 3 and 4, and for those who do not turn 5 on or before September 10 of a school year, there is no requirement to provide special education and related services under a service plan to this same age group of children who are unilaterally placed by their parents in preschool settings.

It is important to note that the count for private school students on December 1, 2004, must include all IDEA-eligible private school students on the count date. This includes both private school students who were receiving services through a services plan, as well as private school students determined eligible, but not receiving services through a service plan.

IV. THE PART B AND PRESCHOOL APPLICATION AND PROCEDURE FOR SUBMISSION

Again this year, the Part B and Preschool grant applications have been consolidated into a single application. However, you must prepare separate budgets for Part B and Preschool entitlement funds. Separate budget forms have been included as part of the application.

Project budget forms include a line item for indirect costs. Applicants who are special education cooperatives should not budget funds in the indirect cost line item because all costs related to operation of the cooperative are considered direct costs. If the applicant is a school district, allocations may be budgeted for indirect costs if the district has an Office of Public Instruction approved indirect cost rate for fiscal year ending June 30, 2006. Questions regarding approved indirect cost rates should be directed to Jim Oberembt, GAAP Accounting, at 444-1257.

Allocations should be budgeted as follows:

- salaries and benefits,
- operating expenses,

- indirect costs (not for special education cooperatives),
- equipment (with a unit cost of \$5,000 or more), and
- transfer to other districts (to be used for consolidated applications, as appropriate).

The procedure for completing the budgets is as follows:

- Refer to the FY '06 allocations report that has been made available on the OPI Web site at: www.opi.state.mt.us/PDF/SpecED/fis/FedAI/.
- Complete the "proposed budget" column on each budget form (Preschool and Part B), allocating the total amount of funds into appropriate line items.
- If purchasing equipment, identify the total amount of funds to be expended for equipment that has a per unit cost of \$5,000 or more.

It is important to remember that equipment items must be preapproved. Line item transfers cannot be made into the equipment line item without prior approval.

The allocations report is based on an estimate of FY '06 current-year funds. If the final allocation amount differs from the estimated amount, the OPI will revise your budgets to reflect the final allocation figure. You may transfer funds between line items in the budget without the OPI approval, other than equipment, as stated in the above paragraph.

When the OPI receives your final fiscal reports for FY '05 Part B and Preschool projects (project period 7/1/04-6/30/05), we will calculate the amount of unexpended FY '05 funds, report this figure to you and add the amount to your already approved FY '06 project(s). These funds will be identified as FY '05 carry-over. The amount of carry-over cannot be determined until the applicant submits final fiscal reports. Therefore, it is critical that final fiscal reports for FY '05 projects are submitted to the OPI on or before August 10, 2005. **Please note that reimbursements requested on final fiscal closeouts received after August 10, 2005, will not be reimbursed by the OPI.**

The project period for the FY '06 projects (that will include both carry-over and current-year funds) will be July 1, 2005 - June 30, 2006.

V. USE OF ALLOCATIONS

PART B FUNDS

Section 613 of IDEA, As Amended in 2004 describes allowable uses of Part B funds by LEAs. It states in part:

`(2) USE OF AMOUNTS-

`(A) IN GENERAL- Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and--

`(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

`(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

`(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

`(B) EXCEPTION- Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to--

`(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

`(ii) a decrease in the enrollment of children with disabilities;

`(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child--

`(I) has left the jurisdiction of the agency;

`(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated;

or

`(III) no longer needs such program of special education; or

`(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

`(C) ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS-

`(i) AMOUNTS IN EXCESS- Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under section 611(f) exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

`(ii) USE OF AMOUNTS TO CARRY OUT ACTIVITIES UNDER ESEA- If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965.

`(iii) STATE PROHIBITION- Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under section 616, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

`(iv) SPECIAL RULE- The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).

`(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA- Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed--

`(i) the number of children with disabilities participating in the schoolwide program; multiplied by

`(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by

`(II) the number of children with disabilities in the jurisdiction of that agency.

`(3) PERSONNEL DEVELOPMENT- The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, subject to the

requirements of section 612(a)(14) and section 2122 of the Elementary and Secondary Education Act of 1965.

`(4) PERMISSIVE USE OF FUNDS-

`(A) USES- Notwithstanding paragraph (2)(A) or section 612(a)(17)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

`(i) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN- For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

`(ii) EARLY INTERVENING SERVICES- To develop and implement coordinated, early intervening educational services in *accordance with subsection (f)*.

`(iii) HIGH COST EDUCATION AND RELATED SERVICES- To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.

`(B) ADMINISTRATIVE CASE MANAGEMENT- A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities...

...`(f) Early Intervening Services.--

``(1) In general.--A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount reduced by the agency pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

``(2) Activities.--In implementing coordinated, early intervening services under this subsection, a local educational agency may carry out activities that include—

``(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

``(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

``(3) Construction.--Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under this part.

``(4) Reporting.--Each local educational agency that develops and maintains coordinated, early intervening services under this subsection shall annually report to the State educational agency on--

``(A) the number of students served under this subsection; and

``(B) the number of students served under this subsection who subsequently receive special education and related services under this title during the preceding 2-year period.

``(5) Coordination with elementary and secondary education act of 1965.--Funds made available to carry out this subsection may be used to carry out coordinated, early intervening

services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

The use of IDEA Part B funds for Early Intervening Services is a new statutory provision in IDEA 2004. Because final federal regulations have not yet been published for IDEA 2004, and because there are many questions left to be answered regarding Early Intervening Services, as well as the federal reporting requirements when using Part B funds for Early Intervening Services, it is recommended that special education cooperatives and districts exercise caution in using Part B funds for Early Intervening Services.

It is expected that final federal regulations under IDEA 2004 will be published prior to the end of December 2005. The final federal regulations will provide more specific guidance on the use of Part B funds. The OPI will make this information available to all districts and cooperatives as soon as it is published.

PRESCHOOL FUNDS

Preschool funds shall be used only to provide special education and related services in accordance with Section 619 of IDEA to eligible children with disabilities aged 3 through 5, inclusive.

VI. APPLICABLE STATUTES AND CAUTIONS

§300.3 Regulations that apply.

The following regulations apply to this program:

- (a) 34 CFR part 76 (State-Administered Programs) except for §§76.125—76.137 and 76.650—76.662.
 - (b) 34 CFR part 77 (Definitions).
 - (c) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
 - (d) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
 - (e) 34 CFR part 81 (General Education Provisions Act— Enforcement).
 - (f) 34 CFR part 82 (New Restrictions on Lobbying).
 - (g) 34 CFR part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).
 - (h) The regulations in this part—34 CFR part 300 (Assistance for Education of Children with Disabilities).
- (Authority: 20 U.S.C. 1221e-3(a)(1))

VII. IDEA PART B AND PRESCHOOL FUND EXPENDITURES

Funds provided under Part B may only be expended in accordance with the provisions of IDEA 2004 and the requirements under Section 613 of IDEA, Local Educational Agency Eligibility, and accounted for in accord with Office of Public Instruction policies and accounting procedures.

Preschool funds may only be used for provision of services and activities relative to eligible children under IDEA ages 3 through 5, inclusive. The funds must be accounted for in accord with Office of Public Instruction accounting policies and procedures.

Please refer to the *Montana Federal and State Grants Handbook* for guidance on administering the grant funds. The Handbook is available on the OPI Web site at:

<http://www.opi.state.mt.us/federalprograms/handbook.html>.

VIII. SPECIAL EDUCATION POLICIES AND PROCEDURES

Effective July 1, 2005, school districts and special education cooperatives must implement special education and related services consistent with all requirements of the Individuals with Disabilities Education Improvement Act of 2004 (PL 108-446) and all current federal regulations, state policies, procedures, and administrative rules developed under the Individuals with Disabilities Education Act Amendments of 1997 (PL 105-17) that are not inconsistent with IDEA PL 108-446.

In those cases in which a current special education federal regulation, state policy, procedure or administrative rule is inconsistent with IDEA 2004 (PL 108-446), school districts and special education cooperatives must implement procedures consistent with the requirements of PL 108-446.

IX. MAINTENANCE OF EFFORT (MOE)

The applicant should refer to the maintenance of effort (MOE) report when completing the MOE information for FY '04 in the project application (refer to number 4 (a) on the front page of the application). The MOE report is available on the OPI Web site at www.opi.mt.gov/speced/finalmoe.html. Questions regarding MOE should be directed to Marilyn Pearson at 444-4428.

THE COMPLETED GRANT APPLICATION MUST BE SUBMITTED TO THE OFFICE OF PUBLIC INSTRUCTION BY JUNE 25, 2005.

Please be sure that **all required areas** of your application are complete. Incomplete applications cannot be approved.

Questions regarding this memorandum or the management of IDEA Part B or Preschool funds should be directed to Marlene Wallis, Administrative Officer, at 444-2504, or Marilyn Pearson, Assistant Director of Special Education, at 444-4428.

Questions regarding accounting procedures for IDEA Part B or Preschool should be directed to Madilon Beatty, OPI Accounting Specialist, at 444-4403.

Enclosures

c: Special Education Directors